

REMARKS

Prior to entry of this paper, claims 1-9, 13, 18, and 30-44 were pending in the application. Upon entry of this paper, claims 1-9, 13, 30, 31, and 33-37 will be pending in the application. Claims 18, 32, and 38-44 will be cancelled without prejudice to or disclaimer of the subject matter therein. Claim 30 will be amended from previous versions. Claims 1-9, 13, and 33-37 are allowed, and claim 30 is amended herein to include the subject matter of allowable claim 32.

This pending application is a reissue continuation of 09/776,394, which is a reissue application of U.S. Patent No. 5,865,846.

Reissue Oath/Declaration

The Office Action indicates that the reissue oath/declaration is defective because it fails to contain the correct language and that a new declaration must be filed before the application can be allowed. When the Patent Office indicates that all the pending claims are in condition for allowance, Applicants will file the supplemental oath.

Allowable Subject Matter

Applicants acknowledge the indication that claims 1-9, 13, and 33-37 are allowed, with claim 32 being allowable. By this paper, Applicants amend claim 30 to include the allowable subject matter of claim 32 and cancel claim 32 from the application. Accordingly, all the claims are in condition for allowance.

Claims

The Office Action indicates that the claims stand rejected as being based upon a defective oath or declaration. Pg. 4. It also indicates that receipt of an appropriate supplemental oath will overcome the rejection. As stated above, Applicants will file the supplemental oath when all the claims are in a condition for allowance.

The rejection of the claims is rendered moot by the cancellations proposed herein. For the convenience of the Examiner, claim 30 is reproduced below to show the changes introduced in this

paper.

30. (Currently amended) A method of surgery comprising:
removing at least a portion of a natural spinal disc from between confronting vertebral bodies;
forming partially hemispherical surfaces in endplates of the confronting vertebral bodies, the partially hemispherical surfaces being different from a natural surface of the endplates; and
inserting between the formed partially hemispherical surfaces an intervertebral disc prosthesis comprising confronting supports, each support having a partially hemispherical exterior surface adapted to mate with one of the formed partially hemispherical surfaces, wherein the supports are capable of movement relative to each other after the prosthesis has been inserted between the formed partially hemispherical surfaces;
prior to forming the partially hemispherical surfaces in the vertebral body endplates,
implanting at least one anchor into a hole having a predetermined position in an anterior surface
of at least one of the confronting vertebral bodies; and
affixing a bone surface milling mechanism to the at least one anchor.

Dependent Claim 31

Dependent claim 31 depends from and further limits independent claim 30 and therefore also is deemed to be patentable over the prior art.

Conclusion

An early formal notice of allowance of claims 1-9, 13, 30, 31, and 33-37 is requested. The final Office Action contains characterizations of the claims and the related art to which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Final Office Action.

If the Examiner believes a telephone conversation would be useful for advancing prosecution of this application, he is invited to telephone the undersigned at 972-739-6969.

US App. No. 10/713,837
Reply to Office Action of 12/10/2007

No fees, including extension of time fees, are believed necessary for consideration of the present paper. If any fees, including claim fees and extension of time fees, are necessary for the proper submission of this paper, Applicants hereby petition for the extension of time, and the Commissioner is authorized to charge any fees, including claim fees and those for the extension of time, to Haynes and Boone, LLP's Deposit Account No. 08-1394.

Respectfully submitted,



Dustin T. Johnson
Registration No. 47,684

Dated: February 11, 2008

HAYNES AND BOONE, LLP
Customer No.: 46333
Telephone: 972/739-6969
Facsimile: 214/200-0853
Client Matter No.: PC904.08
R-186697_I.DOC

Certificate of Service

I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on February 11, 2008.



Diane Sutton